

### **REMARKS**

Claims 1-23 are pending in the application. Claims 1-9 and 11-23 are unamended. Claim 10 was amended to more particularly point out and distinctly claim the present invention.

For at least the reasons set forth below, withdrawal of all outstanding rejections is respectfully requested.

### **Drawings**

In response to the Examiner's drawing objection, labels corresponding to the specification were added to Figs. 1 and 2.

### **Prior Art Rejections**

Claims 1-23 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,996,817 (Birim).

#### **1. Patentability of independent claims 1, 10 and 17 over Birum**

##### **1a. Claim 1**

Claim 1 reads as follows (underlining added for emphasis):

1. A method of software upgrade control for a system server and a sub-network including a plurality of user terminals, the method comprising the steps of:

- (a) providing said system server with updated software versions;
- (b) selecting one of said user terminals;
- (c) requesting from said system server a list of said updated software versions that are absent in said selected user terminal;
- (d) determining whether those of said user terminals unselected in step (b) include any of said absent updated software versions;
- (e) receiving those of said absent updated software versions determined in step (d) to have been included in said unselected user terminals;
- (f) receiving those of said absent updated software versions determined in step (d) to have not been included in said unselected user terminals; and
- (g) upgrading said selected user terminal with said received absent updated software versions.

Claim 1 recites (a) providing said system server with updated software versions; (b) selecting one of a plurality of user terminals; (d) determining whether those of said user terminals unselected in step (b) include any of said absent updated software versions; and (e) receiving those of said absent updated software versions determined in step (d) to have been included in said unselected user terminals. These limitations are not disclosed or suggested in Birum.

The Examiner states that Figs. 2-3 of Birum discloses selecting one of a plurality of user terminals. However, Fig. 2 of Birum discloses one server 200 and Fig. 3 of Birum discloses one client computer 300. Although the client computer 300 is equivalent to a single user terminal of the present invention, nothing in Birum discloses selecting from a plurality of user terminals.

The Examiner states that column 1, lines 40-45 of Birum (“... changing version of an application may be updated ...”) disclose providing said system server with updated software versions. However, column 1, lines 40-45 of Birum disclose only updated software, not providing it on a system server.

The Examiner states that column 1, lines 54-61 of Birum disclose (d) determining whether those of said user terminals unselected in step (b) include any of said absent updated software version; and (e) receiving those of said absent updated software versions determined in step (d) to have been included in said unselected user terminals. However, column 1, lines 54-61 of Birum only discloses determining when to change versions on a single client, identifying resources that belong in a new version and configuring the resources. Column 1, lines 54-61 of Birum do not disclose determining whether unselected user terminals include resources that are absent on a selected user terminal.

Further, column 4, lines 34-36 of Birum disclose that a client checks to see if it has the most current version of content by requesting the most recent version number from a content server. Column 4, lines 48-53 of Birum then disclose that if the resource is not contained in cache or a file on the client computer, the client may request the resource from the content server. Thus, the client computer 300 of Birum is equivalent to the selected user terminal of claim 1 and the server 200 of Birum is equivalent to the system server of claim. Birum does not disclose the client receiving resources from any other entity than the content server.

Therefore, nowhere does Birum disclose comparing an additional unselected user terminal (which is a separate entity from both the selected user terminal and the system server) to a selected user terminal in order to determine whether they include different software versions. Also, nowhere does Birum disclose a selected user terminal receiving software from an additional unselected user terminal (which is a separate entity from both the selected user terminal and the system server). Thus, Birum does not disclose (d) determining whether those of said user terminals unselected in step (b) include any of said absent updated software version; and (e) receiving those of said absent updated software versions determined in step (d) to have been included in said unselected user terminals. For this reason, Birum does not disclose or suggest the invention recited in claim 1.

Accordingly, claim 1 is believed to be patentable over the applied reference.

1b. Claim 10

Amended claim 10 reads as follows (underlining added for emphasis):

10. A software upgrade control system comprising:
- a system server;
    - a plurality of updated software versions provided at said system server;
    - a sub-network including a first user terminal and a second user terminal, each user terminal including a first client-server structure and a second client-server structure;
      - a client provided in said first client-server structure of said first user terminal for requesting from said system server a list of said updated software versions that are absent in said first user terminal and also for broadcasting an inquiry to the second user terminal to determine whether the second user terminal has at least one of said updated software versions that are absent in said first user terminal;
      - a first server provided in said first client-server structure of said second user terminal for receiving the inquiry broadcast by the first user terminal;
      - a second server provided in said second client-server structure of said second user terminal for transmitting one of said updated software versions to said first user terminal in response to said inquiry broadcast;
      - a first client provided in said second client-server structure of said first user terminal for receiving one of said absent updated software versions from said second user terminal; and

a second client provided in said second client-server structure of said first user terminal for receiving one of said absent updated software versions from said system server.

Similar to claim 1, amended claim 10 recites a plurality of updated software versions provided at said system server; a sub-network including a first user terminal and a second user terminal; a client in the first user terminal broadcasting an inquiry to a second user terminal; a client in the first user terminal receiving one of said absent updated software versions from said second user terminal; and a client in the first user terminal receiving one of said absent updated software versions from said system server. These limitations are not disclosed or suggested in Birum.

As discussed above in section 1a, although the client computer 300 is equivalent to a first user terminal of the present invention, nothing in Birum discloses a second user terminal. Also, column 1, lines 40-45 of Birum disclose only updated software and column 4, lines 32-53 of Birum disclose that Birum's invention is carried out between a client computer and a content server.

The Examiner states that Fig. 1 and column 4, lines 44-45 of Birum ("A content server sends the list of resources in the most recent version together with a purge list (Block 705)") disclose the "first client provided in said second client-server structure for requesting one of said absent updated software versions from said unselected user terminals" as recited in previous claim 10. However, amended claim 10 recites that a first client provided in said second client-server structure of said first user terminal for receiving one of said absent updated software versions from said second user terminal. As discussed above in section 1a, Birum does not disclose the client receiving resources from any other entity than the content server. Thus, nowhere does Birum disclose comparing a second user terminal (which is a separate entity from both the first user terminal and the system server) to a first user terminal in order to determine whether they include different software versions. Also, nowhere does Birum disclose a first user terminal receiving resources from a second user terminal (which is a separate entity from both the first user terminal and the system server). For this reason, Birum does not disclose or suggest the invention recited in claim 10.

Accordingly, claim 10 is believed to be patentable over the applied reference.

1c. Claim 17

Claim reads as follows (underlining added for emphasis):

17. A software upgrade control system, comprising:  
    a system server that provides updated software versions;  
    a plurality of user terminals grouped to form a sub-network;  
    a first client-server structure formed in each of said user terminals  
    to request from said system server a list of updated software versions that  
    are absent, broadcast in said sub-network an inquiry as to whether any  
    other user terminals have any updated software versions absent therein,  
    and receive an inquiry broadcast by said other user terminals;  
    a second client-server structure formed in each of said user  
    terminals to transmit one of said updated software versions to one of said  
    other user terminals, receive an absent updated software version from one  
    of said other user terminals having said absent updated software version,  
    and receive an absent updated software version from said system server if  
    no other user terminals has said absent updated software version; and  
    an agent formed in each of said user terminals for data  
    communication between said first and second client-server structures.

Similar to claims 1 and 10, claim 17 recites a system server that provides updated software versions; and a plurality of user terminals that transmit updated software versions to other user terminals and receive updated software version from both other user terminals and from the system server. These limitations are not disclosed or suggested in Birum.

As discussed above in sections 1a and 2a, although the client computer 300 is equivalent to a first user terminal of the present invention, nothing in Birum discloses a second user terminal. Also, column 1, lines 40-45 of Birum disclose only updated software and column 4, lines 32-53 of Birum disclose that Birum's invention is carried out between a client computer and a content server.

Also, as discussed above in sections 1a and 2a, Birum does not disclose that the client receives resources from any other entity than the content server. Thus, nowhere does Birum disclose comparing a user terminal to other user terminals in order to determine whether they include different software versions and nowhere does Birum disclose a user terminal receiving software from other user terminals. For this reason, Birum does not disclose or suggest the invention recited in claim 17.

Accordingly, claim 17 is believed to be patentable over the applied reference.

2. Patentability of the dependent claims

The dependent claims are believed to be patentable over the applied references for at least the reason that they are dependent upon allowable base claims and because they recite additional patentable elements and steps.

**Conclusion**

Insofar as the Examiner's rejections were fully addressed, the present application is in condition for allowance. Issuance of a Notice of Allowability of all pending claims is therefore requested.

Respectfully submitted,

Yu-Chen Chuang et al.

Feb. 5, 2007 By: Clark A. Jablon  
(Date) CLARK A. JABLON  
Registration No. 35,039  
AKIN GUMP STRAUSS HAUER & FELD LLP  
One Commerce Square  
2005 Market Street - Suite 2200  
Philadelphia, PA 19103  
Direct Dial: (215) 965-1293